1947.

File No. O Money Lending/47

Legal DEPARTMENT

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Subject:—

Opinions under the Bombay Money Lenders Act 1946

P 5E

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Std. Sectt. Slip 24 B a.

495-A

C O N T E N T S.

Legal Department File No. C.Money Lending/1947.

Sr. No.	Compilation No.	Subject.	Pages.
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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether no money-lender can carry on the business of money-lending until he secures a license in respect thereof. Section 5 of the Bombay Money-lenders Act, 1946, provides :

> "No money-lender shall carry on the business of money-lending except in the area for which he has been granted a license and except in accordance with the terms and conditions of such license."

This is a mandatory provision. "License" as defined in section 2(7) means a license granted under this Act. It is, therefore, clear that no money-lender can carry on the business of money-lending without obtaining a license under this Act; otherwise he would be liable to punishment under section 34. Section 10 is intended to give time to a money-lender for obtaining a license to save his claims and that section does not exempt a money-lender from obtaining a license to carry on the business of money-lending even temporarily. It is, therefore, clear that no money-lender can now carry on the business of money-lending unless and until he obtains a license.

Sd/-
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11480, dated the 1st December 1947.

SMI/7.5.

Reserve Bank of India — application of the Bombay Money-lenders Act, 1946, to the —— sections 2(10),6(1).

Section 2(10) of the Bombay Money-lenders Act, 1946. defines "money-lender" to mean (i) an individual or (ii) an undivided Hindu family or (iii) a bank or (iv) an unincoporated body of individuals who or which (a) carries on the business of money-lending in the Province or (b) has his or its principal place of such business in the Province. The Reserve Bank will obviously not fall under any of the clause (i), (ii), and (iv). The only question is whether it is a "bank" under clause (iii). "Bank" has been defined in section 2(1) of the Act. According to that definition "bank" means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India. Section 277F of the Indian Companies Act defines a "banking company" to mean a company which carries on as its principal business the accepting of deposits of money on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages, in addition, any one or more of the forms described in the section. The expression "company" has been defined in section 2(2) of the Indian Companies Act, 1913, and the definition will apply to the expression "company" used in section 277F of the Act. Under section 2(2), "company" means a company formed and registered under the Indian Companies Act, 1913, or an existing company. Under sec.2(7) "existing company" means a company formed and registered under the Indian Companies Act, 1866, or under any Act or Acts repealed thereby or under the Indian Companies Act, 1882. The Reserve Bank of India is constituted under section 3 of the Reserve Bank of India Act, 1934.

It is not a company formed and registered under the Indian Companies Act, 1913, or a company formed and registered under the Indian Companies Act,1866, or under any Act or Acts repealed thereby or under the Indian Companies Act, 1882. It is not, therefore, a "company" within the meaning of section 2(2) of the Indian Companies Act, 1913. That being so, it is not a "banking company" within the meaning of section 277F of that Act. The Reserve Bank, therefore, is not a "bank" within the meaning of section 2(10) of the Bombay Money-lenders Act, 1946,and,consequently,the expression "money-lender" as defined in section 2(10) does not include the said Bank. As it is not a money-lender, the provisions of the Bombay Money-lenders Act do not apply to this Bank. The view taken to this effect by the Dy.Secy. and Secy., Revenue Deptt., on page 13 ante is correct.

Sd/-

For Remembrancer of Legal Affairs.

.R. to R.D.,No.454Confl.- dated the 17th December, 1947.

SNT/7.5

R.I.No. 16323
dated 19-12-47.

Submitted.

2. The Collector of Kaira states that there is no provision in the Bombay Money-Lenders Act, 1947 or the rules made thereunder regarding levy of court fee stamp to be affixed on the application for license and therefore nok court fee stamp is leviable on such application. R.D. agrees with this view and proposo to inform all Collectors and the Registrar General of Money-Lenders accordingly. The R.I.A. is requested to advise immediately.

3. Section 6 of the Bombay Lenders Act, 1946, provides that every money-lender shall make an application in the prescribed form for the grant of a license to carry on the business of money-lending. "Prescribed" means prescribed by rules made under the Act (see section 2 (11) Sub-rule (1) of rule 4 of the Bombay Money-Lenders Rules,1947 provides that a money-lender desiring to carry on the business of money-lending shall make an application in Form 2. Sub-rule (3) requires that such application shall be accompanied by an affidavit of the applicant etc., No provision is made either in the Act or the rules made thereunder levying any fee on application under section 6 (1). If it was intended that a fe should be levied a specific provision for the purpose would have been made as is the case of application for taking accounts under section 30(1) (see Rule 13). The application will not also fall under article 1 of schedule II to the Court Fees Act, 1870. The papers may be seen and returned with hthe remark that the view taken by R.D. at p.7 ante is correct.

Sd/-

SMT/7.5.